

APPENDIX D

SCOPING REPORT

**Proposed Tulare Basin
Wildlife Management Area
Kern, Kings and Tulare Counties, California**

United States Department of the Interior
U.S. Fish and Wildlife Service

SCOPING REPORT

The U.S. Fish and Wildlife Service (Service) as lead agency is preparing an Environmental Assessment (EA) on a proposal to create a new Wildlife Management Area (WMA) in the Tulare Basin. The purpose of creating a new Tulare Basin WMA is to stem substantial wetland habitat losses in the lake basin and to support goals set in the Central Valley Joint Venture (CVJV) as well as the North American Waterfowl Management Plan. The EA provides a basis for informed decision making regarding alternatives for accomplishing the waterfowl habitat conservation work described.

The first Planning Update for the Proposed Tulare Basin WMA was mailed to more than 350 individuals and organizations with an interest in the Tulare Basin in June 2002. Landowners known to have managed wetland habitats within the focus area were also contacted through individual notification letters. On July 11, 2002, the Service hosted two public workshops in Visalia and Bakersfield, California, to present the Service's preliminary proposal and request public comment. The public was notified of the workshops through direct mailing of planning updates and news releases throughout central California. Comment cards were distributed at the workshops and made available by mail and in response to inquiries received on the Service website.

The Service received comments from landowners, agencies, community organizations, and interested citizens during the public scoping period in July and August, 2002. Participants at the two workshops provided 103 comments recorded on flip charts, and an additional 19 written comments were received by mail. Complete text of the comments and responses are contained in this scoping report.

The comments received addressed the following issues:

Economics

- Water Rights, Supply, and Quality
- Funding
- Taxes
- Easements
- Fee Acquisition

Biology

- Restoration
- Uplands

Social

- Planning Process
- Expand Project Area
- Uncategorized

Service Response to Public Comments

This report contains all of the comments received during public scoping. The EA will address the expected environmental effects of implementing the proposed action. The responses to comments in this report identify those issues raised during scoping which will be addressed in detail in the EA and those which will not be addressed. It should be noted that the EA document is not a forum used to debate public policy or legal issues; rather it is a planning document used to disclose the environmental effects associated with implementing any one of the action alternatives proposed.

Public Comments and Fish and Wildlife Service (FWS) Responses for Tulare Basin Land Protection Planning Study	
Comment or Question	FWS Response
Topic: Water Rights, Water Supply and Water Quality	
<p>Provide water supply</p> <p>Need more and less costly water to provide adequate wetlands habitat.</p> <p>Water is the most important consideration.</p> <p>Rivers that deliver water are important.</p> <p>Duck club demise linked to pumped ground water costs.</p> <p>Water, Water, Water!</p> <p>Price paid for water is too high.</p> <p>Getting water down here-plumbing is an issue.</p> <p>Voluntary water sellers should be pursued.</p> <p>Suggestions to subsidize pumping costs (by the government) for clubs.</p> <p>If you want water or open space - buy it!</p> <p>Primary issue- pumping water to sustain clubs.</p> <p>If the 800,000 acre feet of water allocated by the CVPIA had been spread out with the Tulare Basin getting a sizeable cut, we would not have the problems we have.</p>	<p>While FWS understands that an affordable water supply of adequate quantity and quality is imperative for private wetlands, the acquisition of additional source water is not a component of this project. The FWS does participate in several partnerships with numerous organizations that may identify or quantify the amount of water necessary for sustained future management of private wetlands. Working in concert with other organizations FWS proposes to support the efforts of local landowners and organizations to identify long term solutions that contribute to the perpetual viability of private wetlands in the Tulare Basin.</p>

Public Comments for Tulare Basin Land Protection Planning Study	
Comment or Question	Response
Topic: Water Rights, Water Supply and Water Quality	
<p>Has FWS ever provided water for private wetlands?</p> <p>The two biggest issues to duck clubs in southern San Joaquin Valley is water availability and cost. Second is reasonable opportunity to harvest birds during the existing hunting season (need to change dates). If FWS can mitigate or address either of these two factors it would be a major benefit to private wetland owners.</p> <p>The cost of water is more critical to preserving wetlands than the cost of land.</p> <p>Save remaining wetlands, not to create new. Convey water as is for the Grasslands. Idle clubs will respond to water. After attending presentation in Visalia, you and your people have knowledge and input to implement this program without public participation. That is a compliment to your department.</p> <p>The plan is salvation to the remaining clubs, as we are being encroached by land developers. The 1997 flood brought back birds - One thing that did that, Water.</p> <p>Water is the most important part of plan and must be cheaper or more of our duck clubs will fail.</p>	<p>While FWS understands that an affordable water supply of adequate quantity and quality is imperative for private wetlands, the acquisition of additional source water is not a component of this project. The FWS does participate in several partnerships with numerous organizations that may identify or quantify the amount of water necessary for sustained future management of private wetlands. Working in concert with other organizations FWS proposes to support the efforts of local landowners and organizations to identify long term solutions that contribute to the perpetual viability of private wetlands in the Tulare Basin.</p>

Public Comments for Tulare Basin Land Protection Planning Study	
Comment or Question	Response
Topic: Water Rights, Water Supply and Water Quality	
<p>Dependable water source and habitat management are primary issues. I am a shareholder in the Rancho Visalia Duck Club - I think unless we can get a reasonable delivery of water our club is soon to shut down. This will be a loss of 540 acres of natural habitat and approximately 100 acres of marsh land.</p> <p>Water is the most important ingredient in preserving the wetlands in the Tulare basin, most all the water in the basin is pumped by private duck clubs from wells. The cost of pumping the ground water is becoming too great a burden to these clubs. In order to preserve the wetlands these duck clubs need cheaper water.</p>	<p>While FWS understands that an affordable water supply of adequate quantity and quality is imperative for private wetlands, the acquisition of additional source water is not a component of this project. The FWS does participate in several partnerships with numerous organizations that may identify or quantify the amount of water necessary for sustained future management of private wetlands. Working in concert with other organizations FWS proposes to support the efforts of local landowners and organizations to identify long term solutions that contribute to the perpetual viability of private wetlands in the Tulare Basin.</p>
Reallocation of water resources within the State 800,000-acre-feet of yield by Bureau of Reclamation.	This is outside the scope of this project proposal.
San Joaquin River-Friant water users- NRDC includes water for Tulare Lake.	There is no connection to the NRDC-Friant Water Users settlement agreement at this time.
What about creation of new water district for private wetlands, or a new RCD?	To facilitate water service, as per John Olivas, this is being considered by other organizations and is outside the scope of this FWS project.
<p>Is there a groundwater management plan?</p> <p>Tulare Lake basin water storage district, Tulare Lake RCD (and one other) have signed an agreement under AB-3030.</p>	<p>Local and state agencies have conducted relevant work. This is not directly related to this FWS project.</p>

Public Comments for Tulare Basin Land Protection Planning Study	
Comment or Question	Response
Topic: Water Rights, Water Supply and Water Quality	
Alpaugh Irrigation District is in financial trouble. Federal government may have to aid low income homeowners. It might work out that water can be available to wetlands.	This issue may be addressed by other local and regional interests and is not directly associated with this FWS project.
What are parameters to obtain mitigation fund water?	Mitigation funding is not anticipated to be available for this project.
California is revising a 30-year water plan and FWS is absent. DWR Bulletin 160 - FWS should get involved in 30-year State water plan.	Local and state agencies have conducted relevant work. This is not directly related to this FWS project.
Bureau of Reclamation has water under Reclamation Improvement Act. Could some of this water be available to private wetlands? Also, Bureau has reduced the cost of power available to some farmers.	This is outside the scope of this project. This issue is being explored by partners and wetland interests through the CVJV. This FWS project could be affected by the results of the investigation to address water and power costs.
Summer Habitat, will nesting waterfowl and water-dependant birds benefit?	Water management on private wetlands would continue to be a responsibility of the landowner.
Abundant water in northern and central California has redistributed ducks. Lack of available water in Kern Co./Tulare Basin has hurt clubs. Migration patterns changed, short stopping birds after a few years.	Comment noted.
Property owners need to know if FWS could commit to purchase easements on lands that once were flooded but are now dry. These areas have been kept dry due to scarce water supplies and the cost of water. Some of these areas flood about one to three times in ten years naturally or due to flood flows (i.e., Poso Creek).	Restoration of idle wetlands is likely to be influenced by concern for listed species that occur in Tulare Basin. FWS is working with private landowners and non-governmental organizations to address this issue. Including wetland restoration on properties offered for conservation easement may be considered as an alternative to the original proposal.

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Water Rights, Water Supply and Water Quality	
<p>NRCS wants the FWS to deal with water issues. Expand the scope of the project to include acquisition of water for wetlands and endangered species issues. Protection for adjacent landowners - Safe Harbor agreements.</p> <p>Water is lost in transport recharge, ditch loss, from Eastside.</p> <p>Work outside of parameter of agency easement program to expand level 4 refuge water supplies, change law like CVPIA.</p> <p>Federal Funding of water purchases outside of existing systems.</p> <p>FWS should “take in” or manage the NRCS Wetland Reserve Program lands. The areas are flood prone.</p>	<p>The FWS will evaluate properties or proposals on an individual basis considering the biological benefits and landscape location of parcels. Endangered species recovery is programmatically independent from this proposal. Safe Harbor agreements can be established within the guidelines of existing FWS policy and are independent of this project. Regarding acquisition of water, while FWS understands an affordable water supply of adequate quantity and quality is imperative for private wetlands, acquiring additional source water is not a component of this project. FWS does participate in several partnerships with organizations that may identify or quantify the amount of water necessary for sustained future management of private wetlands. Working in concert with other organizations FWS proposes to support the efforts of local landowners and organizations to identify long term solutions that contribute to the perpetual viability of private wetlands in the Tulare Basin.</p>
<p>Flood land coordinated resource management plan for Lamont does not take wildlife into account. Old duck clubs and historic wetlands are not addressed.</p>	<p>Comment noted.</p>
Topic: Funding	
<p>FWS can use relations with environmental community to secure funds for habitat ventures.</p>	<p>FWS works in various partnerships including the CVJV which benefit from environmental community funding. To the extent that existing or new partnerships can accomplish conservation measures identified in this plan, that approach will be utilized.</p>

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Funding	
Where is the money?	Funding for FWS purchase of conservation easements is often derived from the Migratory Bird Conservation Fund, which is derived from duck stamp receipts.
Project lives or dies on outside funding.	FWS has traditional sources of funding which should be adequate to accomplish the proposed protection measures.
<p>Secure funds from environmental interests (organizations) to assist private wetland owners.</p> <p>Partner with groups that can provide funding.</p> <p>Sounds like the project is multipurpose, therefore funds must come from various sources.</p> <p>Look in to funding from TNC.</p>	The solicitation of additional funding may be accomplished by working in partnership with other state or federal agencies and private non-governmental organizations. The primary responsibility for this activity will reside with FWS partners.
Earnings from agricultural fields or leases help off set water costs. If FWS provided water to private wetlands in some fashion or subsidized the cost of water, that would encourage us (clubs) or enable us to participate.	Comment noted.
Each district is separate and has an independent funding source.	Comment noted.
Create a trust fund to fund club costs?	This idea is being considered by local interests and may compliment FWS land use protection efforts. A partnership linking these two activities may be considered if initiated by local landowners.

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Expand Project Area	
<p>Include King's County south of Highway 41.</p> <p>Clubs occur in Bear Mountain Boulevard area (South of Bakersfield). Within the study area.</p> <p>Will project area include clubs in the Arvin Area - Bear Mountain Blvd.?</p> <p>Please include King's County.</p> <p>Perhaps additional land purchase for additional refuge would be feasible.</p>	<p>An evaluation of the biological resources in the area offered will be conducted by FWS staff and landowners will be consulted to determine if it is appropriate to enlarge the geographic area of the project at this time.</p>
Topic: Planning Process	
Initiate steps to plan.	The scoping meeting is the initial step in public participation of the plan.
Record in the document who the players are. (Who will be involved?)	Planning participation or potential realty transactions are entirely voluntary. A map included in the Environmental Assessment, identifies eligible properties. Additional proper-ties not identified may also meet habitat criteria of existing wetlands that could be eligible.
Categorization and consolidation of lands within boundaries - historic versus current wetlands.	FWS understands this comment relates to the disjointed nature of existing wetlands and opportunity to reconnect historic and current wetlands. Comment noted.
<p>A comprehensive plan is needed which includes ecotourism, which landowners profit from, and habitat value of non-consumptive and consumptive purposes.</p> <p>Commercial corridors for nature ecotourism.</p>	<p>A comprehensive plan for the Tulare Basin is outside the scope of this focused proposal. FWS participates with Central Valley Joint Venture and other partners that promote ecotourism. Private landowners could develop ecotourism ventures if they desire.</p>

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Planning Process	
Is there a requirement for all of the planning area to be contiguous?	It is possible to have discontinuous geographic areas in one project.
Work with Forest Service, USACE and BOR to preserve watersheds.	This is outside the scope of actions proposed for this project. It is an activity that FWS continues to support through the CVJV and working with various partnerships.
Land Use planning model, as per Mark Reisner.	Planning will be conducted in conformance with FWS policy and procedures.
Model plan after work in Sacramento Valley. Include counties and California DFG.	FWS has conducted similar land protection programs in both Sacramento and Central San Joaquin Valley for approximately 25 years. Communication with Kern, Kings, and Tulare counties and the CDFG has been an important part of the FWS planning process.
Don't allow project to become too large help existing wetlands first, time is of the essence!	FWS will attempt to avoid unnecessary delays and remain focused on wetlands protection.
Do not add more acreage other than original plan of 12,000. Keep the project as presented at the Visalia meeting.	An evaluation of the biological resources in the area offered will be conducted by FWS staff and landowners will be consulted to determine if it is appropriate to enlarge the geographic area of the project at this time.
Coordinate with KCVF HCP Kern Co. Valley Floor Park planned by Bakersfield in NE, on bluff. Too bad Tejon Ranch and wetlands on the Grapevine near I-5 are not in focus area. Tejon plans to pave SJ Valley are opposed by enviros; we want wildlife corri-dors. Get land before it's salted out. See SJVDIP for salt spoiling ag. land details. Salt threatened land is cheap. If Kit fox habitat was preserved east of Bakersfield, using MB HCP funds in NE, on bluffs, might be OK.	Comments noted, endangered species issues will be reviewed via an informal (internal) Section 7, ESA consultation.

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Easements	
Programs have been offered to duck clubs in the past with management requirements to spend money on water that may not always be available. If flooding the properties every year is required, it will affect our ability to participate or comply with the easement.	Easements are negotiated on a case by case basis to meet FWS conservation needs and landowner needs.
How much money would we get relative to the total value of the land?	The value of the easement is determined by an appraiser. The appraiser will look at the terms and conditions of the easement, determine the value of the rights being acquired, and estimate the value using approved appraisal procedures.
Stay on task with focus on this area. Do not dilute with fluff that impacts the ability to complete the original proposal. Mineral rights as they interfere with easement rights?	FWS will avoid unnecessary delays and remain focused on wetlands protection. The mineral rights are going to remain in the ownership of the private landowner when conservation easements are purchased.
How does FWS take in to account partial ownership of pumps or improvements?	The appraisal process.
Is enough funding going to be available to purchase conservation easements? If so, how much is allocated?	Migratory Bird Commission funding is requested annually for FWS projects like this. After a purchase agreement (option) has been signed and the property is appraised, the amount of funding needed is known. Allocations vary annually as available project properties offered vary. It may take several years to complete proposed protection efforts.
Is the sale of a conservation easement done on a bid basis?	Easements are negotiated on a case by case basis to meet FWS conservation needs and landowner needs.
This project will benefit the area. Easement program will help maintain or increase the amount of actual wetlands.	Comments noted.

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Easements	
Concern about mineral rights. Possibility of acquiring mineral rights.	Mineral rights are unaffected by easement.
Primary goal is maintaining existing wetlands.	This is a correct statement.
Is there any way to buy back an easement?	No, easements are perpetual.
Are the terms of the easements “standard” across the board or are there variations to it?	For ease of implementing the program, FWS would like to keep the easements standardized. However, on a case by case basis, modifications for specific properties can be added or deleted. These modifications may affect the appraised value.
Is the easement transferable?	The easement is perpetual and stays with the land. This means that the landowner can sell the property, in fee to another owner. When this occurs, the easement remains in place, and the new landowner is obligated to abide by the terms and conditions of the easement as agreed to by the previous landowner.
What type or level of restrictions are imposed on properties signed up for FWS conservation easements? The more difficult the restrictions, the more it will effect participation.	The primary purpose of obtaining a conservation easement is to restrict future development which changes the character of the land or adversely affects wildlife, and thus would be prohibited. Access for the purpose of determining compliance with easement conditions must be available to FWS. Traditional uses of the land such as hunting or grazing are allowed.
Agricultural production occurs on some portions of duck club properties. Is the ag. production viewed as a positive or negative on a property offered for conservation easement? Can clubs continue to farm portions of the property?	This will be determined after an evaluation of the property and suitability for conservation easement. Crop selection would be limited to crops considered to be wildlife friendly. In the Tulare Basin, agricultural croplands will not be given as high a priority as native uplands for protection acquisition by FWS.

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Fee Acquisition	
Fee versus easement acquisition?	It is possible to purchase property in fee, FWS will consider fee acquisition on a case by case basis when habitat is high quality and landowners are only interested in a fee transaction.
Topic: Restoration	
Include wetland restoration potential in FWS project, as per Larry Norris, NRCS.	Restoration projects or proposals will be considered individually on the biological merits of the project or property and the values that may be obtained.
How about restoring idle wetlands and converting back to active wetlands management?	Restoration of idle wetlands will likely be influenced by concern for listed species occurring in Tulare Basin. FWS is working with private landowners and non-governmental organizations to determine how to address this issue. Including wetland restoration on properties offered for conservation easement may be considered as an alternative to the original proposal.
If we restore water to idle wetland ponds would FWS be interested in buying easements?	Several specific factors would affect accepting idle wetlands into a conservation easement, including the availability of water.
Topic: Taxes	
<p>What tax burden is created on the landowner by selling a conservation easement?</p> <p>FWS needs to provide IRS findings to clubs.</p> <p>Provide tax consequence information to the clubs.</p>	Note: discussion occurred about the variation in manner that landownership is held, (inc., limited partnership, non-profit, individual, etc.) This issue has numerous specific related financial issues. FWS recommends landowners consult with a tax advisor.

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Taxes	
Has FWS used “Friendly Condemnation” to help landowners to avoid tax consequences? Investigate this approach as a benefit.	FWS’s long standing policy is to acquire lands (including easements) from willing sellers. Eminent domain is rarely used by FWS. FWS policy is to acquire land through condemnation only in order to: determine legal owner (clear title); settle a difference of opinion of value (when the owner is agreeable to court action); or prevent uses which would irreparably damage resources the refuge was established to protect. FWS, like many Federal agencies, has the power of eminent domain, granted in the Constitution and General Condemnation Act of 1888. It can be used to acquire lands and interest in lands for the public good.
Topic: Uplands	
<p>Consider upland habitat between wetlands for mitigation banking or HCP. The interlink between would provide synergy.</p> <p>Upland habitat is impossible to restore, it needs the greatest attention where undisturbed land still exists.</p>	Where upland areas are in the same ownership with proposed wetlands conservation easement or where the biological and natural resource values of wetlands are supported by adjacent uplands including them in protection measures will be considered. The extent of adjacent uplands included may be limited by the type of funding available. Mitigation banking and HCP protection measures will be conducted independently by other organizations and are outside the scope of this project.
On upland areas, is there the ability to write the easement to alter upland areas to improve habitat?	This issue requires more specific information about the proposed alteration. Disturbance to easement areas would generally require advance notification and approval by FWS. Installation and maintenance of hunting blinds is exempt from notification requirement.

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Uncategorized	
<p>Mosaic approach is wise.</p> <p>Good ideas discussed - don't lose focus on main idea. Should have phases to address the other things that need to be addressed.</p> <p>Avoid litigation.</p>	Comments noted.
Local land trusts, State conservation model and mitigation banking integrated into plan.	The scope of this comment is broader than the intended area of consideration.
Delta protection - connected to this plan?	This is outside the project scope and being accomplished by agencies independently.
We will look at lawsuits (litigants) for potential partners. FWS could facilitate agreements.	This is possible but not directly connected to the current FWS proposal.
<p>Is this good timing for the FWS politically? This project has not been political or controversial. The timing appears to be good as numerous organizations have indicated active support for this project.</p> <p>All existing clubs are interested in the project.</p>	There appears to be a high level of interest and support for this project by organized hunting clubs.
Address Federal and State public trust issues.	The legal issues related to this comment are outside of the scope of this project proposal.
Northern California and Colusa Co. working relationship is difficult.	The relationship referred to is outside of the geographic scope of this proposal.
What is land use mitigation?	The proposed FWS program is not intended for use as a mitigation program for land use.
Mtn. Plover, Nuttall's WP and California Thrasher not marsh birds.	The species listed are not obligate species associated with wetlands.
How does FWS project relate to land retirement program?	Land retirement program is not a FWS program; it is principally sponsored by the Bureau of Reclamation.

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Uncategorized	
Kern Waterbank (DWR/Kern Co. water agency) taxpayer purchase of 2,317 acres with assurances for wildlife and public use is now a private club for Paramount farms.	Comment noted.
Private landowners need technical assistance about wetland management.	FWS will continue to make technical assistance available to landowners.
Tulare County staff suggests “connecting aquatic habitat lands with terrestrial habitat lands.” Also, “setting up mitigation banking available to city, county, State governments and private enterprise to purchase these lands for mitigation on associated projects.”	This is outside the scope of the FWS proposal and not consistent with existing FWS policy.
Duck clubs are preserving wetlands, keep the clubs going.	Comment noted.
Work with power companies to get favorable kw/hour rates for clubs fall and spring. Remove ag. surcharge.	This issue is being explored by partners and wetland interests through the CVJV. This project could be affected by the results of the investigation to address water and power costs.
People afraid of this plan do not understand the potential to generate revenue. Take of property by the government is not likely.	Comment noted.
EQUIP - Env. Quality Improvement Program - NRCS. Become involved with the process.	This is outside of the scope of actions proposed by FWS for this project. It is an activity that FWS continues to support thru the CVJV and working with various partnerships.
Remove dam on the White River near Allensworth Ecological zone.	This is outside the scope of the FWS proposal

Public Comments for Tulare Basin Land Protection Planning	
Comment or Question	Response
Topic: Uncategorized	
<p>The protection plan is essential, when so much is already lost. Primarily, this study should proceed in a widely inclusive manner. The Audubon, the land trusts, the Sierra Club and more will flock (no pun intended!) together on these issues.</p> <p>There will be a great opportunity for success if the right resources are tapped. Otherwise, I am new to this issue (I was stunned to see maps showing wetlands as they existed 100 years ago) and would like very much to learn more. Thank you.</p>	Comments noted.